tiff's inability to recover, in view of his own misconduct. And the plaintiff's misconduct is equally grave in the presence or absence of fraud in the defendant.[7]

In a recent case, however, the Supreme Court of Missouri held that the plaintiff could recover under such circumstances on the ground of public policy. *Hobbs* v. *Boatright*, 93 S. W. Rep. 934.[8] This is in accord with a considerable body, possibly the majority, of decisions,[9] the cases being nearly evenly divided. In this case the recovery was in tort, for fraud and deceit. But as the cause of action arises only through the existence of, and the plaintiff's participation in, the illegal contract, it seems that the plaintiff should on principle be barred in tort as well as in contract or quasi-contract. The cases, too, make no distinction in result between the two forms of action. The argument of the court, that on public policy recovery by the plaintiff is desirable, in spite of the plaintiff's wrongdoing, on account of the unusual guilt of the defendants, seems to be open to objection. It would seem better for the court to refuse to interfere in illegal contracts, once entered into by a plaintiff fully responsible for his wrongdoing, than to protect such a plaintiff and thus to encourage the belief that people may enter into illegal contracts and transactions secure in the knowledge that the law will protect them from all fraud. It is not the office of the law to guarantee to the gambler a square deal. The illegal contract should be outlawed in its entirety, and no rights allowed to issue from it in any way, in order to discourage all from entering upon it. The courts are naturally anxious to punish the unscrupulous defendant in these cases, but that should be left to the criminal law.

CONSTRUCTION OF STATUTES AFFECTING THE CONSTITUTIONAL PRIVILEGE AGAINST SELF-CRIMINATION. — This question of statutory construction has been raised by a group of recent important decisions. *United States* v. *Armour & Co.*, 142 Fed. Rep. 808 (Dist. Ct., N. D. Ill.); *State* v. *Murphy*, 107 N. W. Rep. 470 (Wis.); *Rudolph* v. *State*, 107 N. W. Rep. 466 (Wis.). The statute involved in the federal case was the Act of Feb. 11, 1893,[1] providing that "no person shall be excused from testifying . . . before the Interstate Commerce Commission . . . on the ground that the testimony . . . may tend to incriminate him. . . . But no person shall be prosecuted . . . on account of any transaction, matter or thing concerning which he may testify . . . before said Commission"; and in the other cases a state duplicate of that statute was under consideration.[2] The federal statute was enacted by Congress in deference to a decision of the Supreme Court in Counselman *v.* Hitchcock [3] holding a prior immunity statute (providing merely that evidence exacted from a witness should not be used against him) unconstitutional, as infringing the fifth amendment to the Constitution, since it did not protect the witness from the indirect use of his testimony against him.

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[7] Abbe *v.* Marr, 14 Cal. 210; Kitchen *v.* Greenabaum, 61 Mo. 110.

[8] In this case the plaintiff was himself fraudulent, yet recovered on the ground of defendant's fraud. See statement of facts, p. 72.

[9] Catts *v.* Phalen, 43 U. S. 376; Webb *v.* Fulchire, 3 Ired. (N. C.) 485. *Contra*, Abbe *v.* Marr, *supra*; Kitchen *v.* Greenabaum, *supra*.

[1] 27 Stat. at L. 443, c. 83.

[2] Wis. L. 1901, p. 106, c. 85.

[3] 142 U. S. 547.

There are dicta in numerous cases to the effect that under this statute the act of testifying wipes out the offense completely as far as concerns the witness,[4] affording an immunity even broader than that provided by the Constitution, which merely provides against incriminating testimony given under compulsion; but never before, apparently, has the question been directly involved in a decision. In the federal case under consideration Judge Humphrey repeats the sweeping dicta of previous cases, contending for the immunity even where the witness was under no compulsion[5] and when his testimony was not self-criminatory, and refuses to sustain the prosecution. In the two Wisconsin cases the prosecution is supported on the ground that the immunity statute was intended to be only an equivalent for the fifth amendment, and therefore should be confined to cases of incriminating evidence obtained by compulsion.

Judge Humphrey's conclusions are the result of a literal application of the language of the statute, together with an assumption that the primary object of Congress in its enactment was to obtain information as a basis for regulative legislation rather than for purposes of prosecution. However this last may be, a consideration of the line of statutes culminating in that of 1893 indicates that the primary object of Congress was simply to provide an immunity sufficient to satisfy the constitutional requirements as laid down by the supreme court in Counselman *v.* Hitchcock. Now, although this case does contain statements to the effect that, in order to be constitutional, an immunity clause must protect the witness from any subsequent prosecution, these statements seem to have been made in contemplation of a witness offering self-criminating testimony under compulsion. Moreover, in the statute itself, though the words actually granting the immunity from prosecution are without qualification, they immediately follow the provision that the witness shall not be *excused* from testifying (thus implying compulsion), on the ground that such testimony may tend to *criminate* him. There is warrant, therefore, for the contention, in one of the Wisconsin cases, that the clause granting immunity should be read as qualified by the conditions of compulsion and self-crimination.[6] Finally, if the replies of the witness not only lack all self-criminatory character, but are in addition merely negative in effect, there is authority for the contention that they do not form testimony at all, thus not falling within the literal statutory requirements;[7] and in any event the result of granting immunity in such cases would be so clearly contrary to the spirit of the enactment as to justify a different construction.[8]

Conspiracy to Commit a Crime Requiring Plurality of Actors. — When the concurrence of two persons is necessary for the commission of a crime, — bigamy or adultery, for example, — the agreement to commit the crime is said to form part of the crime itself and not an independent conspiracy.[1] In such a case combination, which is the gist of conspiracy, is

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[4] See Brown *v.* Walker, 161 U. S. 591.
[5] See People *v.* Sharp, 107 N. Y. 427, *accord.*
[6] *Cf.* United States *v.* Price, 96 Fed. Rep. 960.
[7] *Re* Edwards, 58 Ia. 431.
[8] Church of the Holy Trinity *v.* United States, 143 U. S. 457.

[1] Shannon *v.* Commonwealth, 14 Pa. St. 226; Miles *v.* State, 58 Ala. 390; see 2 Whart., Crim. L., 10 ed., § 1339.